No. 1108 50

In the Supreme Court of the United States

OCTOBER TERM, 1946

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

v.

READ MAGAZINE, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	2
Specification of errors to be urged	11
Reasons for granting the writ	12
Conclusion	19
Appendix	20

CITATIONS

Cases:

Agnew v. *Federal Reserve Board*, 153 F. 2d 785, reversed, No. 66, this Term (January 6, 1947)	19
Bates & Guild Co. v. *Payne*, 194 U. S. 106	16
Corn Products Refining Co. v. *Federal Trade Commission*, 324 U. S. 726	15
Farley v. *Simmons*, 99 F. 2d 343, certiorari denied, 305 U. S. 651	16
Federal Trade Commission v. *Algoma Lumber Co.* 291 U. S. 67	15
Federal Trade Commission v. *Pacific States Paper Trade Association*, 273 U. S. 52	15
Federal Trade Commission v. *Standard Education Society*, 302 U. S. 112	16
Lamb v. *Patterson*, 154 F. 2d 319, reversed, No. 229, this Term (January 20, 1947)	18
Leach v. *Carlile*, 258 U. S. 138	16
Liberty Mut. Ins. Co. v. *Cardillo*, 154 F. 2d 529, reversed, No. 265, this Term (March 10, 1947)	19
Medo Corp. v. *National Labor Relations Board*, 321 U. S. 678	15
National Labor Relations Board v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282	17
National Labor Relations Board v. *Link-Belt Co.*, 311 U. S. 584	17
National Labor Relations Board v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105	15, 17
National Labor Relations Board v. *Pennsylvania Greyhound Lines*, 303 U. S. 261	15
National Labor Relations Board v. *Southern Bell Telephone Co.*, 319 U. S. 50	15, 17

85081—47——1

Cases—Continued

	Page
National Labor Relations Board v. *Waterman Steamship Corp.*, 309 U. S. 206	17, 19
Putnam v. *Morgan*, 172 Fed. 450	16
Santa Fe Pac. R. Co. v. *Ickes*, 153 F.2d 305, reversed, Nos. 97 and 98, this Term (February 3, 1947)	19
Standard Education Society v. *Federal Trade Commission*, 302 U. S. 112	16
Swayne & Hoyt, Ltd. v. *United States*, 300 U. S. 297	15
Woko, Inc. v. *Federal Communications Commission*, 153 F. 2d 623, reversed, No. 65, this Term (December 9, 1946)	18
Statutes:	
Fair Labor Standards Act, 29 U. S. C. 210	18
National Labor Relations Act, 29 U. S. C. 160f	18
Public Utility Holding Company Act, 15 U. S. C. 79x (a)	18
R. S. 3929 (39 U. S. C. 259), as amended by the Act of September 19, 1890, c. 908, Sec. 2, 26 Stat. 465	12, 20
R. S. 3929, as amended by the Act of March 2, 1895, Sec. 4, 28 Stat. 963	21
R. S. 4041 (39 U. S. C. 732), as amended by the Act of September 19, 1890, c. 908, Sec. 3, 26 Stat. 465	12, 21
Securities Act, 15 U. S. C. 77i (a)	18

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1108

ROBERT E. HANNEGAN, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, PETITIONER

v.

READ MAGAZINE, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Acting Solicitor General, on behalf of the Postmaster General of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above-entitled case on December 9, 1946.

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 75–83) is reported at 63 F. Supp. 318. The majority and dissenting opinions in the Court of Appeals (R. 111–119) are reported in 158 F. 2d 542.

JURISDICTION

The judgment of the Court of Appeals was entered on December 9, 1946 (R. 120). The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, in a suit to enjoin a fraud order issued by the Postmaster General on the ground that respondents were engaged in conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations, or promises, a court may substitute its judgment for that of the Postmaster General, where it cannot properly be decided that, under the undisputed facts and the inferences which may be drawn therefrom, there was no reasonable basis for the Postmaster General's order.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 20–22.

STATEMENT

On October 1, 1945, the Postmaster General found, "upon evidence satisfactory to him," that respondent Facts Magazine and certain of its officers and agents were engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses

in violation of Sections 3929 and 4041 of the Revised Statutes, as amended, and issued a fraud order pursuant to the provisions of those sections (R. 27).

Respondent Facts Magazine, a part of a somewhat involved corporate structure,[1] sponsored and respondent Publishers Service Company promoted[2] a "puzzle" contest, commencing in April 1945, which is the subject of the Postmaster General's fraud order, and known as the "Hall of Fame Contest" (R. 31, 65). This contest, respondents contended, was conducted for the purpose of promoting the sale of books published by respondent Literary Classics, Inc. (R. 42, 65). The Hall of Fame Contest was nationally advertised in newspapers and periodicals and was invariably referred to and designated as a "Puzzle Contest" (R. 31, 65; see photostatic copy of advertisement, R. 30–31).

---

[1] Facts Magazine is a division of Read Magazine, and the latter, as is also another corporation known as Literary Classics, Inc., is a subsidiary of Publishers Service Company, a New York corporation which has been engaged in conducting contests for newspapers, publications, and other customers (R. 30, 64–65, 87–88). The officers of these parent and subsidiary corporations are approximately the same (R. 29, 30, 88).

[2] Since 1941, Publishers Service has largely confined its contest promotional efforts to those contests which were sponsored by itself directly or through its subsidiaries (R. 31). Such contests included the so-called Music Appreciation Contest conducted in 1941–1942 by Music Appreciation, Inc., a subsidiary; All-American Contest in 1942–1943; and Read Magazine Contest in 1943–1944 (R. 31).

The advertisement stated that $17,500 was to be distributed to the winners of the puzzle contest,[3] which was to consist of 80 rebus puzzles divided into 20 series of 4 puzzles each.[4] To qualify for a prize, it was required that fifteen cents be enclosed with the solutions for each of the 20 series of puzzles. Thus, by the termination of the contest on June 16, 1945 (R. 42), a contestant would have paid a total of $3. Those who submitted "a complete Group of solutions for this contest" were to receive a book[5] (R. 43).

Approximately 190,000 contestants initially entered the contest and 90,000 completed the first series (R. 32, 43). Of these 90,000, more than 35,000 submitted correct solutions, with the result that no prizes were awarded (R. 32, 43). This vast number of ties was expected and was in line with similar past experiences of respondents in

---

[3] The $17,500 of prize money was to be divided into 500 cash prizes. First prize was $10,000; 2nd prize, $2,000; 3d prize, $1,000; 4th prize, $500; 5th, 6th, and 7th prizes, $250 each; 8th prize, $150; 9th and 10th prizes, $100 each; the next 90 prizes, $10 each; and the next 400 prizes, $5 each.

[4] A rebus puzzle consists of a series of pictures of objects to be identified. By addition and subtraction of letters in the names identifying the objects, the solution of the puzzle is obtained (R. 65).

[5] The book alleged to have been distributed was *The Way of All Flesh* by Samuel Butler (R. 43).

conducting the All-American puzzle contest* (R. 32, 93, 97). The 35,000 persons who tied for first place in the Hall of Fame contest neither knew nor had any way of finding out how many others had also tied, for the rules of the contest provided that "the sponsors will not make known the number of persons competing in any phase of the contest, irrespective of how large or how small that number may be" (R. 30–31).

Rule 9 of the contest, printed in the advertisement in small type, provides, among other things, the procedure in the event there are ties. It is there stated (R. 30–31):

> * * * In case of ties, if two or more persons tie in submitting the correct solutions, then the first two or more prizes will be reserved for those contestants and will be awarded in the order of accuracy of the submissions of those contestants to a first, and if necessary, a second, tie-breaking group of puzzles, divided into Series exactly like the first Group. In case a second tie-breaking Group of puzzles is necessary, contestants eligible to solve same will be required to accompany their solutions to this second tie-breaking Group of puzzles

*In that contest, in which Publishers Service received through the mails approximately $1,500,000 and in which about $40,000 was paid out in prize money, 132,000 persons completed the puzzles, of whom approximately 95,000, or about 72 per cent, correctly solved all the puzzles and thus tied for first place (R. 32, 92, 96).

with a letter of not more than 200 words on the subject: "The Puzzle I Found Most Interesting and Educational in This Contest." All tie-breaking Series must be qualified in accordance with the provisions of Rule No. 8. Only in case ties exist after such final tie-breaking puzzles have been checked will the letters be considered, and in that event they will be judged on the basis of originality in description and general interest.

The first tie-breaker contest consisted of 80 simple rebus puzzles, divided into 20 series of four each, and again required the payment of 15 cents for each series, or a total of $3.00.[1] Each contestant thereupon received a copy of Jane Aus-

[1] Concerning the tie-breaking puzzles, the Solicitor of the Post Office Department found (R. 33):

"The circular containing these 'Tie-Breaker' puzzles now states the fact that should have been clearly set forth by the promoters at the outset, namely, that the entrant is required to pay an additional $3.00 for the privilege of submitting solutions to the 'Tie-Breaking' puzzles in order to remain in the contest (Gov. Ex. 10–F–6). He is also advised that upon payment of such fee he will 'receive the August selection of the Literary Classics Book Club.' The Club is simply a term used by the respondents, and no club exists in fact except for the purposes of exploiting the participants in this contest. The so-called 'Tie-Breaker' puzzles are as simple and as easy to solve as those contained in the original booklet of 'ALL 80 PUZZLES.' This appears to be motivated by the promoters' desire for as many ties as possible with a correspondingly larger number of additional second tie-breaker fees and double and quadruple prize entry fees which together with the original $3.00 fee may total as high as $45.00 per contestant."

ten's *Pride and Prejudice* published by Literary Classics, Inc. Of the approximately 35,000 who participated in the tie-breaker contest, 27,000 successfully solved all of the puzzles and were thus still tied for first place and thus became eligible to compete in a second tie-breaking contest to complete which would necessitate the payment of another $3.00. With this second tie-breaker series of puzzles the contestants were to submit a letter on the subject "The Puzzle I Found Most Interesting and Educational in This Contest," but which letter was to be considered "only in case ties exist."[8] With reference to the present puzzle contest at this stage, the Solicitor of the Post Office Department found (R. 33–34):

> Throughout the contestant's participation in this so-called "puzzle contest" up to this stage thereof, the fiction is maintained that the prizes may be won by those who correctly solve all of the simple rebus puzzles sent them by the promoters. However, the evidence in this case shows that beginning with the year 1941 (since which time all of the puzzle contests conducted by the Pub-

[8] That there would have been ties at the conclusion of the second tie-breaker contest would seem inevitable. In the All-American contest conducted by respondents, of the 95,000 persons who successfully solved the first series of tie-breaker puzzles, 77,000 actually participated in the second tie-breaker series and submitted essays (R. 92). Of these 77,000 persons, 55,000 correctly solved all the puzzles and had their essays judged and the prizes accordingly were distributed on the basis of the essays (R. 93).

735081—47——2

lishers Service Company have been solely for the benefit of that company and its subsidiaries) none of the rebus contests promoted by Mr. Sarazen and his associates have been won by the solution of the puzzles alone. Prior to that time contests were operated by this firm only as promotional schemes for other interests. The Music Appreciation, All American, and Read contests, which also were presented to the public as rebus puzzle contests, were finally decided not upon the basis of correct solutions to the puzzles by one person or by a number of persons submitting a lesser number of correct solutions than the first prize winner. All of said contests, which Mr. Sarazen testified were similar in pattern to the one here involved, were finally decided upon the basis of the best letter or essay written by the ultimately successful contestant. It was freely admitted at the hearing in this case that respondents anticipate and, in fact, planned that the current so-called "Hall of Fame Puzzle Contest" will similarly be decided upon the basis of the best letter written and not upon the basis of the correct solutions of the puzzles. It is therefore apparent from the evidence in this case, and I so find, that respondents knowingly and falsely represented to persons solicited to participate in the "Hall of Fame Puzzle Contest" that they could and would win the prizes offered by submitting the most correct solutions to the "ALL 80

PUZZLES" and later to the tie-breaking puzzles, whereas, in truth and in fact, as they well knew, such representations were untrue and this contest can only be won by solving all the puzzles and, in addition, writing what will finally be adjudged the best letter on the subject "The Puzzle I Found Most Interesting and Educational in This Contest." In other words, the contest is one in which the winners will be those who are the best letter writers.

The fact that the contest might be decided by a best letter is mentioned in the official rules only as a remote contingency, whereas, in truth, it was an inevitable certainty from the very beginning of the contest, as the respondents well knew.

The Hall of Fame Puzzle Contest was not concluded for, after the Post Office Department had received complaints from participants in the contest and had held hearings, the Postmaster General, referring to the Solicitor's findings, issued the fraud order here involved on October 1, 1945, prior to the completion of the second tie-breaking series (R. 27, 104, 116).

On October 2, 1945, respondents filed a complaint in the United States District Court for the District of Columbia, naming Robert E. Hannegan, individually and as Postmaster General of the United States as defendant, alleging that the "fraud order now sought to be enjoined was not fairly arrived at, has no substantial evidence to

support it, and is palpably wrong and therefore arbitrary" (R. 50). Respondents prayed for temporary relief and for the issuance of a permanent injunction enjoining defendant, his agents, servants and employees from (a) directly or indirectly doing, or attempting to do, any act or thing in pursuance of the fraud order or enforcing or attempting to enforce the fraud order and (b) from in any way interfering with the normal conduct of respondents' business as the consequence of the issuance of the fraud order (R. 53). The Postmaster General filed a motion to dismiss the complaint or, in the alternative, for summary judgment (R. 73). The respondents likewise filed a motion for summary judgment (R. 74). The district court while stating that "the advertisement is by no means a model of clarity and lucidity," that "It is diffuse and prolix, and at times somewhat obscure," and that "Many of its salient provisions are printed in rather small type," nevertheless held that "The conclusion is inevitable that there is no evidence to support the finding of fact on which the fraud order is based and that, therefore, the plaintiff is entitled to a permanent injunction against the enforcement of the order" (R. 82). On appeal, the judgment of the district court was affirmed, Justice Edgerton dissenting (R. 111–119).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In failing to hold that the advertisements of the contest falsely or fraudulently represented that the contest was a "puzzle" contest whereas it was known and planned to be a letter writing contest.

2. In holding that the advertisements for the Puzzle Contest "fairly urged contestants to read the Rules and that the Rules stated fairly, in style of type, placement, and terms, what was proposed."

3. In holding that there was "no ambiguity in or departure from the proposals stated."

4. In holding that "a finding of false pretenses, representations, or promises could not properly be made" in this case and that such a conclusion was arbitrary and capricious.

5. In failing to hold that the Postmaster General could reasonably find that respondents' advertisement constituted a false or fraudulent pretense, representation, or promise.

6. In failing to hold that the district court should have granted petitioner's motion to dismiss the complaint or, in the alternative, for summary judgment.

7. In affirming the judgment of the district court.

REASONS FOR GRANTING THE WRIT

The basic facts in the instant case are undisputed. They consist of the advertisements for the "puzzle" contest, the prior experience of respondents in conducting similar contests, and the fact that the contest here involved followed the general pattern which respondents anticipated. Sections 3929 and 4041 of the Revised Statutes (Appendix, pp. 20–22) authorize the Postmaster General, "upon evidence satisfactory to him," that a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations or promises is being conducted, to issue a "fraud order." On the basis of the admitted facts and the inferences which he drew therefrom petitioner concluded that the "puzzle" contest here involved was a prohibited device or scheme and issued the corresponding "fraud order." The court below, however, substituted its judgment for that of the Postmaster General as to what the undisputed facts reasonably tended to show and the inferences to be drawn from those facts and, finding that its conclusions differed from those of the Postmaster General, held that his findings were arbitrary and capricious and that the fraud order based thereon was invalid. In so holding we submit that the court below has decided an important question of federal law in a manner contrary to the plain mandate of Sections 3929 and 4041 of the Revised

Statutes and inconsistent with applicable decisions of this Court and lower federal courts in the field of administrative law.

1. As stated by Justice Edgerton in his dissenting opinion (R. 116):

> * * * if [respondents] intended to convey to all or any of their readers either (1) the idea that the contest was merely a puzzle contest or (2) the idea that there was a substantial chance that prizes would be won merely by solving puzzles [respondents] made a false pretense. The fraud order must be sustained if the Postmaster General could reasonably find either of those intents. Either is plainly material, since a person who is willing to risk his money in a puzzle contest may be unwilling to risk it in a letter-writing contest and a person who is willing to face a possibility that puzzles may not be decisive may be unwilling to face a certainty that they will not be decisive.

The facts before the Postmaster General fully support his finding that respondents were conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses or representations. The scheme was held out to be a puzzle contest but that was exactly what it was not. Nor did respondents ever intend to allow it to become one. The "contest," which was clearly intended to be a money making

device[9] (R. 33, 34, 38, 39), depended for its financial success not only upon a high number of entrants, but upon a high number of contestants surviving all tie-breaking contests (R. 33, 38). Respondents had every reason to believe, from past experience, that if the "puzzles" were kept sufficiently simple, thousands of contestants would survive the final tie-breaking "puzzle" contest, and there is no suggestion in the instant case that the "puzzles" were not being kept sufficiently simple to bring about the desired result.[10] It was anticipated and planned that thousands of contestants would be induced to send in additional fees for tie-breaking contests and that the prizes would be awarded as a result of a letter writing contest and not by the successful solution of the "puzzles." In these circumstances, the finding of the Postmaster General that the scheme was falsely represented to be a "puzzle" contest, whereas in fact it was a letter writing contest, cannot be said to be without support in the record. That his finding was correct as well as reasonable is clearly demonstrated in Justice Edgerton's dissenting opinion, to which we refer for a more detailed statement of our position.

---

[9] The statement in the advertisements that the contest was being conducted as a means of popularizing the Literary Classics Book Club is false. No such club existed (R. 33).

[10] Approximately 27,000 contestants solved the first tie-breaking contest (R. 33).

2. The court below, although referring to the substantial evidence rule, disregarded the factual inferences drawn by the Postmaster General in favor of conclusions of its own. The decision is thereby inconsistent with the many cases in which this Court has held "that the inferences from the evidence are to be drawn by the [administrative agency] and not by the courts". *Medo Corp.* v. *National Labor Relations Board*, 321 U. S. 678, 681–682n; *Corn Products Refining Co.* v. *Federal Trade Commission*, 324 U. S. 726, 739; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 63; *National Labor Relations Board* v. *Southern Bell Telephone Co.*, 319 U. S. 50, 60; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105, 107; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 271; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 307. The following statement of the Court in *Federal Trade Commission* v. *Algoma Lumber Co., supra*, is especially pertinent here (291 U. S. at p. 73):

> The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own

appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. Statute and decision (*Federal Trade Comm'n v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 61, 63) forbid that exercise of power.

Courts, of course, are governed by the same principles in reviewing orders of the Postmaster General as in reviewing orders of other agencies. *Leach* v. *Carlile*, 258 U. S. 138; *Bates & Guild Co.* v. *Payne*, 194 U. S. 106; *Farley* v. *Simmons*, 99 F. 2d 343 (App. D. C.), certiorari denied, 305 U. S. 651; *Putnam* v. *Morgan*, 172 Fed. 450 (C. C. S. D. N. Y.). The court below did not suggest the contrary.

Despite its general reference to the substantial evidence rule, the court below seemed to determine for itself what "a reasonable reader" (R. 115) would believe. That this may not be the proper substantive approach is indicated by *Federal Trade Commission* v. *Standard Education Society*, 302 U. S. 112, which also involved a scheme likely to be most successful with persons who did not analyze representations with great care.[11] This

[11] In this connection, Justice Edgerton stated (R. 119), citing the *Standard Education* case:

"The court finds that no reasonable reader of the advertisement would think that prizes might be won merely by solving puzzles. Obviously this finding of fact seems to me erroneous. Many readers lacked the knowledge, based on experience with similar contests, which appellees had and this court now has. Moreover, I think the court's finding is

type of scheme is obviously likely to succeed with those, perhaps less reasonable, readers who do not understand or appreciate the implications of small print.

On a number of occasions this Court has regarded the departure by a circuit court of appeals from the accepted principles of judicial review and its substitution of its views for those of an administrative agency as sufficient to warrant the granting of a writ of certiorari. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 586; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 208; *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282; *National Labor Relations Board* v. *Southern Bell Telephone Co.*, 319 U. S. 50. We believe that certiorari should be granted in the instant case for the same reason.

---

immaterial. To say that it invalidates the fraud order is equivalent to saying that if a scheme would not deceive reasonable men, to whom it is not primarily addressed, it may legally be used to take money from children and other simple people. The advertisement is primarily addressed to such people, since they are the ones likely to be attracted by crude and easy puzzles. 'The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.'"

3. The questions presented in the instant case are of general significance. On the merits the decision will permit shrewd and unscrupulous advertisers to take advantage of a large portion of the public by stating facts accurately but in a manner deliberately calculated to give an erroneous impression. Moreover, most suits seeking to enjoin officials of the Federal Government, and all suits against the Postmaster General, may be maintained only in the District of Columbia, the official residence of the officers concerned. Under many statutes aggrieved parties have the option of bringing proceedings to review administrative decisions in the Court of Appeals for the District of Columbia.[12] The decisions of the Court of Appeals for the District of Columbia thus assume major importance in this field. And the failure of the court below, so strategically placed for the review of administrative orders, in this and other cases to honor the doctrine that courts are not to substitute their views for those of administrative officials is even of greater importance. Cf. *WOKO, Inc.* v. *Federal Communications Commission,* 153 F. 2d 623 (App. D. C.), reversed, No. 65, this Term (December 9, 1946); *Lamb* v. *Patterson,* 154 F. 2d 319 (App. D. C.), reversed, No. 229,

[12] E. g., National Labor Relations Act, 29 U. S. C. 106f; Fair Labor Standards Act, 29 U. S. C. 210; Securities Act, 15 U. S. C. 77i (a); Public Utility Holding Company Act, 15 U. S. C. 79x (a).

this Term (January 20, 1947); *Santa Fe Pac. R. Co.* v. *Ickes,* 153 F. 2d 305 (App. D. C.), reversed, Nos. 97 and 98, this Term (February 3, 1947); *Agnew* v. *Federal Reserve Board,* 153 F. 2d 785 (App. D. C.), reversed, No. 66, this Term (January 6, 1947); *Liberty Mut. Ins. Co.* v. *Cardillo,* 154 F. 2d 529 (App. D. C.), reversed, No. 265, this Term (March 10, 1947).

In order to correct a similar trend this Court granted certiorari in *National Labor Relations Board* v. *Waterman Steamship Corp.,* 309 U. S. 206, 208. We submit that the decision below constitutes a departure from accepted legal principles and should not be permitted to stand without review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

MARCH 1947.

APPENDIX

R. S. § 3929 (39 U. S. C. 259), as amended by the Act of September 19, 1890, c. 908, § 2, 26 Stat. 465, 466, provides as follows:

> SEC. 3929. The Postmaster-General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any postoffice at which registered letters arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such registered letters to the postmaster at the office at which they were originally mailed, with the word "Fraudulent" plainly written or stamped upon the outside thereof; and all such letters so returned to such postmasters shall be by them returned to the writers thereof, under such regulations as the Postmaster-General may prescribe. But nothing contained in this section shall be so construed as to authorize any postmaster or other person to open any letter not addressed to himself. The public advertisement by such person or company so

conducting such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by registered letters to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster-General shall not be precluded from ascertaining the existence of such agency in any other legal way satisfactory to himself.

R. S. § 3929 was further amended by the Act of March 2, 1895, c. 191, § 4, 28 Stat. 963, 964, to cover not only registered letters but all letters or other matter sent by mail:

SEC. 4. That the powers conferred upon the Postmaster-General by the statute of eighteen hundred and ninety, chapter nine hundred and eight, section two, are hereby extended and made applicable to all letters or other matter sent by mail.

R. S. § 4041 (39 U. S. C. 732), as amended by the Act of September 19, 1890, c. 908, § 3, 26 Stat. 465, 466 provides as follows:

SEC. 4041. The Postmaster-General may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, forbid the payment by any postmaster to said person or company of any

postal money-orders drawn to his or its order, or in his or its favor, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in such money-orders. But this shall not authorize any person to open any letter not addressed to himself. The public advertisement by such person or company so conducting any such lottery, gift enterprise, scheme, or device, that remittances for the same may be made by means of postal money-orders to any other person, firm, bank, corporation, or association named therein shall be held to be prima facie evidence of the existence of said agency by all the parties named therein; but the Postmaster-General shall not be precluded from ascertaining the existence of such agency in any other legal way.

U. S. GOVERNMENT PRINTING OFFICE: 1947